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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, prepared pursuant to Council resolutions 17/4 and 26/22. In the report, the Working Group examines the duty of States to protect against human rights abuses involving those business enterprises that they own or control, which are generally referred to as State-owned enterprises. Many States the world over manage large State-owned enterprise portfolios and those enterprises have emerged as significant actors in the global economy. State-owned enterprises can have important human rights impacts, both positive and negative. Yet, not enough attention has been paid to their human rights responsibilities and impacts, nor to the duties of States in this regard.

The report calls attention to and clarifies what States are expected to do in their role as owners of enterprises and why. The starting point is principle 4 of the Guiding Principles on Business and Human Rights, which provides that States should take "additional" steps to protect against human rights abuses by business enterprises that are owned or controlled by the State. The report highlights the persuasive reasons for additional action to be taken by States in this regard, including policy coherence, legal obligations, reputation and credibility.

The Guiding Principles do not specify what steps States should take. In the present report, the Working Group suggests a range of measures that States could take to operationalize the call to take additional steps with regard to State-owned enterprises, by building on existing international guidance and national practices related to the corporate governance of those enterprises.

In working to ensure that all business enterprises respect human rights, there are compelling reasons for States to lead by example and to do their utmost to ensure that the enterprises under their ownership or control fully respect human rights. The Working Group calls on States to demonstrate that leadership.

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I. Introduction

A. Background, aims and outline of the report

1. In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises examines the duty of States to protect against human rights abuses involving those business enterprises that they own or control, which are generally referred to as State-owned enterprises.

2. The starting point for the present discussion is the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.[1] Since their unanimous endorsement by the Human Rights Council in 2011, the Guiding Principles have become the authoritative global reference for preventing and addressing adverse human rights impacts arising from business-related activity, including by State-owned enterprises. Guiding principle 4 provides that States should take "additional" steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, as well as by other entities such as export credit agencies that are seen as being closely associated with the State. Guiding principle 4 does not, however, clarify what these steps might be.

3. Why are States explicitly expected to take additional action to protect against human rights abuses by State-owned enterprises? Is it not sufficient that States are required to take appropriate steps to ensure that all companies, irrespective of structure and ownership, respect human rights? And what are the normative, policy and practical implications of guiding principle 4? These are some of the questions that the present report will address.

4. The Working Group considers that it is important to clarify the particular duties of States with respect to the enterprises that they own or control. This goes to the core of how a State should behave in its role as owner of companies and the ways in which its ownership model is aligned with its international human rights obligations. In the present report, the Working Group will highlight the compelling reasons why States should take additional action in this regard,[1] including policy coherence, legal obligations, reputation and credibility.

5. The Working Group notes a general lack of attention, in practice, on the part of States and other actors to the implications of guiding principle 4 with respect to State-owned enterprises. Policies, guidelines and good practices are lacking at both the national and international levels. Governance and protection gaps exist, which must be addressed.

6. Thus, the present report has two objectives: first, to call attention to and clarify what States are expected to do under the Guiding Principles regarding the enterprises that they own or control and why; and second, to help States to better implement the Guiding Principles by suggesting a range of measures that they could take to operationalize the requirement of additional steps to ensure that State-owned enterprises respect human rights.

7. Section I of the report discusses the state of play of State-owned enterprises, their definitions and the scope of the report. Section II discusses the normative and policy implications of guiding principle 4 and the reasons behind the call on States to take additional steps. Section III highlights a range of measures that States could and should take to operationalize the call to take additional steps. The report ends with concrete recommendations to States and other stakeholders.

[1] See A/HRC/17/31, annex.

8. The Working Group would like to thank the States that responded to its questionnaire on the role of States as economic actors.[2] Their responses, when relevant to State-owned enterprises, have been used to inform the present report. Not many States responded to the questionnaire, thus the geographic scope of information available for the report is limited. However, efforts have been made to expand the geographic scope of the report (see section III) and the Working Group welcomes information from the States that have relevant practices not referred to in the present report. The Working Group intends to follow up on these issues, including at the fifth annual Forum on Business and Human Rights to be held in Geneva in November 2016. It looks forward to cooperating further on these issues with States, State-owned enterprises and other interested partners.

B. Defining State-owned enterprises

9. Countries differ greatly with respect to the range of entities that they consider as State-owned enterprises. For the purposes of the present report, the Working Group uses the definition contained in the OECD Guidelines on Corporate Governance of State-Owned Enterprises,[3] which reads as follows:

> Any corporate entity recognized by national law as an enterprise, and in which the State exercises ownership, should be considered as a State-owned enterprise. This includes joint stock companies, limited liability companies and partnerships limited by shares. Moreover statutory corporations, with their legal personality established through specific legislation, should be considered as State-owned enterprises if their purpose and activities, or parts of their activities, are of a largely economic nature (p. 15).

10. The OECD Guidelines on Corporate Governance of State-Owned Enterprises clarifies the relationship between ownership and control and places emphasis on effective control:

> the Guidelines apply to enterprises that are under the control of the State, either by the State being the ultimate beneficiary owner of the majority of voting shares or otherwise exercising an equivalent degree of control. Examples of an equivalent degree of control would include, for instance, cases where legal stipulations or corporate articles of association ensure continued State control over an enterprise or its board of directors in which it holds a minority stake (ibid.).

11. Thus, there might be cases where a State, as a minority shareholder, does exercise effective control and, as a result, the OECD Guidelines on Corporate Governance of State-Owned Enterprises and principle 4 of the Guiding Principles would apply.

C. State-owned enterprises: state of play

12. State-owned enterprises are important players in domestic markets and increasingly so in the global economy. Despite waves of privatization in the 1980s and 1990s, many States still manage large State-owned enterprises portfolios. Over the past decade, the

[2] They are: Brazil, Chile, Colombia, Cuba, Cyprus, Denmark, France, Georgia, Ghana, Italy, Kenya, Norway, Republic of Korea, Sweden, Switzerland, Kyrgyzstan, Netherlands, Russian Federation, United Kingdom of Great Britain and Northern Ireland, United States of America. All responses are available as received at www.ohchr.org/EN/Issues/Business/Pages/ImplementationGP.aspx.

[3] Organization for Economic Cooperation and Development, *OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition* (Paris, 2015).

influence of State-owned enterprises has also been on the rise in the global economy. The proportion of State-owned enterprises among the Fortune Global 500 companies is estimated to have grown from 9.8 per cent in 2005 to 22.8 per cent in 2014, with US$ 389.3 billion in profits and US$ 28.4 trillion in assets. This rise is driven primarily by developing economies, in particular China.[4] These figures only comprise publicly listed companies, thus, the overall share of State-owned enterprises in the global economy is likely to be greater.

13. Traditionally, State-owned enterprises have had a solely national focus on sectors considered of national importance, such as energy, infrastructure and public utilities. Nowadays, State-owned enterprises, while still present in these sectors, are also active in a large range of sectors, such as finance.[5] They also increasingly operate globally. In 2014, for instance, there were at least 550 State-owned transnational corporations, both listed and unlisted, from developed and developing countries. While the number is relatively small, the number of their foreign affiliates and the scale of their foreign assets are significant, with over 15,000 foreign affiliates and estimated foreign assets of over US$ 2 trillion.[6] In addition, State-owned enterprises are increasingly active in mergers and acquisitions of companies worldwide.[7]

14. The rationale for State ownership has varied over time and is multifaceted, with reasons including providing public goods, fostering industries that would not be developed through private investment, generating government revenue and functioning as a crisis response tool.[8] In addition to their commercial activities, some State-owned enterprises are also tasked with fulfilling specific public policy outcomes. State-owned enterprises are owned not only by central or federal Governments, but also by local and sub-regional governments.

15. Concerns have been raised that the advantages enjoyed by such enterprises owing to their relationship with State agencies, such as direct subsidies, preferential regulatory treatment and State-backed guarantees, lead to their being less transparent, accountable or efficient, enjoying a position of market domination and operating with higher levels of impunity.[9] Against this backdrop, there has been a trend to reform the sector and encourage

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[4] Only entities in which the Government held 50 per cent or more shares were considered. See G. Kwiatkowski and P. Augustynowicz, "State-owned enterprises in the global economy – analysis based on Fortune Global 500 list", *Managing Intellectual Capital and Innovation for Sustainable and Inclusive Society: Proceedings of the MakeLearn and TIIM International Conference*, (Bari, Italy, 27-29 May 2015), pp. 1739-1747); and Przemyslaw Kowalski and others, "State-owned enterprises: trade effects and policy implications", *OECD Trade Policy Paper* No. 147 (22 March 2013), pp. 5 and 188.

[5] Kwiatkowski and Augustynowicz, "State-owned enterprises in the global economy", p. 1744 (see footnote 4).

[6] United Nations Conference on Trade and Development (UNCTAD), *World Investment Report: Investing in the SDGs: An Action Plan* (New York and Geneva, 2014), pp. 20-21. State-owned transnational corporations are defined here as corporations that are at least 10 per cent owned by the State or public entities, or in which the State or public entity is the largest shareholder or has a "golden share" (p. 34).

[7] For instance, in the European Union, State-owned enterprises accounted for 70 per cent of the total Chinese investment in 2015. Thilo Hanemann and Mikko Huotari, "A new record year for Chinese outbound investment in Europe" (Mercator Institute for China Studies, February 2016), p. 5.

[8] Kowalski and others, "State-owned enterprises", pp. 11-13 (see footnote 4).

[9] See for example, Kowalski and others, "State-owned enterprises", p. 4; Arief Budiman, Diaan-Yi Lin and Seelan Singham, "Improving performance at state-owned enterprises", (McKinsey & Company, May 2009), available at www.mckinsey.com/industries/public-sector/our-insights/improving-performance-at-state-owned-enterprises; and Institute for Human Rights and Business, "Human rights

the efficient, transparent and accountable performance of State-owned enterprises. International guidelines on corporate governance have been developed to that end (see section II below).

16. Concerns have also been raised about the apparent lack of awareness of many State-owned enterprises of their responsibility to respect human rights and their poor performance in this regard. A study by the Business and Human Rights Resource Centre on the human rights commitments of companies showed that, of the 180 companies contacted between 2014 and 2015, State-owned enterprises were the least responsive.[10] Although the picture is mixed, with a number of State-owned enterprises having made commitments on human rights,[11] allegations of human rights abuses by such enterprises in their home countries and in their operations abroad have been documented, including labour-related abuses, environmental damage, land rights violations and intimidation and defamation of human rights defenders.[12]

17. Reports of human rights abuses, and companies' listings of human rights or environmental, social and corporate governance performance, tend not to differentiate between private companies and State-owned enterprises, which makes it difficult to ascertain the human rights performance of those enterprises overall. Also, State-owned enterprises' respect for human rights can depend on varying degrees of both State requirements and other incentives, such as industry standards.

D. Scope and limits of the report

18. In addition to State-owned enterprises, guiding principle 4 explicitly mentions entities that are closely associated with the State, such as export credit agencies and official investment insurance or guarantee agencies as well as development agencies and development finance institutions. However, discussion of these entities is not within the scope of the present report.

19. The report focuses only on State-owned enterprises, in the traditional sense. It does not include sovereign wealth funds,[13] which, although not explicitly mentioned in guiding principle 4, fall under the category of businesses that are owned or controlled by the State. Sometimes considered a special type of State-owned enterprise, what matters is that they are owned or controlled by the State, regardless of their precise corporate form. Sovereign wealth funds have emerged as a significant force in global finance, managing assets estimated to be close to US$ 6.4 trillion in 2014.[14]

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in the political economy of states: avenues for application", *State of Play* series No. 3 (March 2014), p. 51.

[10] See Business and Human Rights Resource Centre, "Action on business and human rights: Where are we now? - Key findings from our Action Platforms (March 2015), p. 4.

[11] By 1 April 2016, 242 State-owned enterprises out of around 8,700 self-reported business participants had joined the United Nations Global Compact initiative (actual number may differ slightly as this is based on self-reporting of State-owned status). Database available at unglobalcompact.org.

[12] See Human Rights and Business Dilemmas Forum, "Working with SOEs", available at www.hrbdf.org/dilemmas/working-soe/#.Vp-yFU3bLIU; and information on the Business and Human Rights Resource Centre website, www.business-humanrights.org/.

[13] See the Santiago Principles, available at: http www.iwg-swf.org/pubs/eng/santiagoprinciples.pdf.

[14] UNCTAD, *World Investment Report* 2014 pp. xvii-xviii (see footnote 6).

20. Given the potential impacts and leverage that all of the above-mentioned enterprises have on human rights,[15] the Working Group encourages stakeholders to give priority to their human rights responsibilities and those of the associated States.

21. In the same vein, it is worth recalling that guiding principle 4 is part of what the Guiding Principles call the "State-business nexus", which also encompasses Principles 5 and 6. The State-business nexus includes situations where the State is an economic actor in its own right, when it contracts or otherwise engages with companies to provide services that may impact on human rights, or when it conducts commercial transactions (procurement) with companies. These issues are beyond the scope of the present report, but deserve more attention.

II. Normative and policy framework underpinning State action in relation to State-owned enterprises

A. State duty to protect against abuse by State-owned enterprises

1. Requirement to take "additional" steps

22. The Guiding Principles make it clear that, in relation to the State duty to protect, States should do more than simply treat State-owned enterprises as any other business enterprise. Guiding principle 4 requires that "States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, ... including, where appropriate, by requiring human rights due diligence". However, the Guiding Principles do not specify what those steps should be. The Working Group makes suggestions to that effect in section III of the present report.

23. The additional steps to be taken can be understood as measures in addition to those outlined in Principles 1 to 3, which are applicable to all companies. These principles require States to take appropriate steps to prevent, investigate, punish and redress human rights abuses by businesses, as well as clearly set expectations with regard to respect for human rights and discharge their obligations through various regulatory and policy actions.

24. The international policy framework is moving towards reinforcing the call made in principle 4. In a recent recommendation, the Council of Europe Committee of Ministers recommended that "Member States should apply additional measures to require business enterprises to respect human rights, including, where appropriate, by carrying out human rights due diligence, that may be integrated into existing due diligence procedures, when member States ... own or control business enterprises".[16]

25. However, the requirement to take additional steps does not mean that States should be any less concerned about protecting against abuses by private enterprises. The ultimate goal is to achieve full respect for human rights by all enterprises, irrespective of ownership. The requirement emphasizes that States, as owners of enterprises, should use the additional means at their disposal to protect against abuse.

[15] Note recent positive developments in this regard with the adoption in March 2016 by Norges Bank Investment Management, which manages Norway's Pension Fund, of "Human rights: expectations towards companies", available at www.nbim.no/en/responsibility/risk-management/human-rights.

[16] See recommendation CM/Rec(2016)3 on human rights and business, para. 22.

2. Policy rationale

26. The Guiding Principles and their commentaries explicitly set out the reasons why greater expectations are placed on States in relation to enterprises that they own or control. These relate to the close relationship between the State and the enterprise, the means at the disposal of the State for monitoring and ensuring respect for human rights and leverage. The commentary to principle 4 recalls that, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights. Where States own or control business enterprises, they have greatest means within their power to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented. Senior management typically reports to State agencies and associated government departments have greater scope for scrutiny and oversight, including ensuring that effective human rights due diligence is implemented.

27. It is thus a matter of policy coherence. Governmental departments and entities tasked with exercising State ownership — often the Ministries of Finance or of Economy — need to be able to act in a manner that is compatible with the overall human rights obligations of the State. The commentary to principle 8 of the Guiding Principles calls on Governments to support and equip departments and agencies that shape business practices to be informed of and act in a manner compatible with these obligations.

28. It is also a matter of legitimacy and credibility. The State should not ask less of companies that are closely associated with it than it asks of private businesses. The human rights record of a State-owned enterprise is often associated with that of the State and vice-versa. There are significant expectations for States to "get their own house in order". In turn, businesses are much more likely to accept directives from the State if they consider that the State is leading by example and ensuring that the entities closest to, if not directly associated with, it respect human rights.

3. International law implications

29. Additional reasons for greater action on the part of States with regard to State-owned enterprises relate to State obligations under international human rights law and general international law.

30. United Nations human rights treaty bodies suggest that States may breach the duty to respect or to protect under international human rights law owing to human rights abuses by State-owned enterprises.[17]

31. Treaty bodies usually refer to the duty to protect against abuse by third parties, including private and State-owned business enterprises. The State could be held responsible for not taking all reasonable steps to prevent, mitigate and remediate the abuse.

32. At times, treaty bodies have also associated the human rights impacts of State-owned enterprises with the State duty to respect, considering such enterprises as quasi-State organs or agents and assuming that they are wholly owned or controlled by the State. The Committee on Economic, Social and Cultural Rights provides that the duty to respect requires the State to refrain from unlawfully polluting air, water and soil, for example through industrial waste from State-owned facilities.[18] The Committee on the Elimination of Discrimination against Women has often called on States to increase the number of

[17] See A/HRC/4/35/Add.1; and the Universal Human Rights Index available at www.uhri.ohchr.org/en.

[18] See the Committee's general comments No.14 (2000) on the right to the highest attainable standard of health, para. 34; No. 15 (2002) on the right to water, para. 21; and No. 23 (2016) on the right to just and favourable conditions of work, para. 58.

women in decision-making positions in State-owned enterprises, equating them to other governmental bodies.[19]

33. There are situations in which the acts of a State-owned enterprise or the nature of its relationship to the State are more clearly associated with the State duty to respect. This is the case when such an enterprise performs public functions — such as managing a prison — or has delegated authority or is contracted to provide public services. In such cases, the State must exercise adequate oversight in order to meet its human rights obligations and ensure respect.[20] All these considerations have particular resonance in the context of the Sustainable Development Goals and national plans to achieve them, given the important role that businesses, including State-owned enterprises, are expected to play.

34. The commentary to guiding principle 4 states that a human rights abuse by a State-owned enterprise may also constitute a violation of the State's own international law obligations when the acts of the enterprise can be attributed to the State. Public international law envisages specific conditions under which private persons or entities which are not State organs according to the internal law of the State concerned may engage the responsibility of the State.[21] Under these rules, abuse by enterprises owned or controlled by the State may be attributable to the State in question. Here, the issue of whether particular business entities are State-owned or not is, however, of less importance in deciding whether their acts are attributable to the State. What matters is whether the business entity is completely dependent on the State, is empowered by law to exercise elements of government function and acts under those powers, or acts under the instructions, direction or control of the State.[22] Nevertheless, given the nature of relationships between State-owned enterprises and States, it is more likely that abuses by a State-owned enterprise could lead to attribution of State responsibility than those by private businesses.

B. State-owned enterprises as business enterprises: the corporate responsibility to respect human rights

35. Although the present report focuses primarily on States' duties with respect to State-owned enterprises, it is important to recall that such enterprises are commercial entities that should respect human rights like any other private enterprise. Guiding principle 14 provides that "the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, *ownership* and structure" (emphasis added). The same reasoning can be found in the OECD Guidelines for Multinational Enterprises,[23] which are aligned with the Guiding Principles, and the International Labour Organization Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Thus, it is clear that Principles 11 to 24, applicable to pillar II of the Guiding Principles, and Principles 29 to 31 under pillar III fully and equally apply to State-owned enterprises.

[19] See CEDAW/C/MAR/CO/5; CEDAW/C/BIH/CO/3; A/56/38, para. 171 (Uzbekistan); and A/57/38, paras. 104 (Estonia) and 150 (Trinidad and Tobago).

[20] See also A/HRC/15/31.

[21] See A/56/10 and Corr. 1 and 2, para. 77; and Olivier de Schutter, "The responsibility of states", in Simon Chesterman and Angelina Fisher, eds., *Private Security, Public Order: The outsourcing of Public Services and Its Limits* (Oxford, Oxford University Press, 2009), pp. 17-37.

[22] See A/56/10 and Corr. 1 and 2, para. 77, arts. 5 and 8.

[23] OECD, *OECD Guidelines for Multinational Enterprises* (Paris, 2011).

36. In addition to the responsibility of State-owned enterprises to respect human rights in the same manner as any private business, they are expected to observe the highest standard of responsible business conduct on par with listed companies. The OECD Guidelines for Multinational Enterprises suggest that public expectation is often higher for multinational State-owned enterprises than for fully private companies: "State-owned multinational enterprises are subject to the same recommendations as privately owned enterprises, but public scrutiny is often magnified when a State is the final owner" (p. 22). The OECD Guidelines on Corporate Governance of State-Owned Enterprises note that State-owned enterprises should observe high standards of transparency and be subject to the same high quality accounting, disclosure, compliance and auditing standards as listed companies (p. 24). Such heightened expectations are reflected in a number of State policies (see section III below).

37. It is important to note that respect for human rights is required for all operations of State-owned enterprises, regardless of whether they are purely commercial or related to specific public purposes. The Guiding Principles are concerned about preventing and addressing adverse human rights impacts throughout all the operations of businesses, including those of State-owned enterprises.

C. Link between corporate governance and human rights

38. In order to ensure international policy coherence and effectiveness, the Working Group considers it essential to build on existing guidelines and models for better governance and accountability of State-owned enterprises in order to enhance the management of their human rights impacts. The OECD Guidelines on Corporate Governance of State-Owned Enterprises and the G20/OECD Principles of Corporate Governance[24] are the most relevant documents to the present discussion. They provide a robust template for governance of State-owned enterprises. They are also closely linked to existing guidance on responsible business conduct and human rights, in particular the OECD Guidelines for Multinational Enterprises and the Guiding Principles on Business and Human Rights. Although approved by OECD member States only, the OECD Guidelines on Corporate Governance of State-Owned Enterprises and the G20/OECD Principles of Corporate Governance, which have also been approved by the Group of 20 (G20), have achieved the rank of an international benchmark and are implemented and promoted beyond OECD member States.[25]

39. The Working Group notes the conceptual and normative links between corporate governance, on the one hand, and responsible business conduct and human rights, on the other. At a fundamental level, all the instruments cover the governance of business. The OECD Guidelines on Corporate Governance of State-owned Enterprises are "recommendations to governments on how to ensure that SOEs operate efficiently, transparently and in an accountable manner" (Foreword). This is very much in line with the aims of guiding principle 4 (with accountability being understood here with reference to human rights impacts).

40. The OECD Guidelines on Corporate Governance of State-Owned Enterprises and the OECD Guidelines for Multinational Enterprises acknowledge their mutual relevance and each suggests that States take into account the other. The Guidelines for Multinational

[24] See OECD, *G20/OECD Principles of Corporate Governance* (Paris, 2015).

[25] Three non-OECD countries — Colombia, Latvia and Russian Federation — have formally associated themselves with the Guidelines; see also World Bank, Corporate Governance of State-owned Enterprises: A Toolkit (Washington D.C., 2014).

Enterprises, for instance, consider corporate governance important for the implementation of responsible business conduct principles and standards. The recommendations on disclosure and transparency are very similar in both guidelines and explicitly aligned in relation to stakeholder relations. The OECD Guidelines on Corporate Governance of State-Owned Enterprises provide that: "State ownership policy should fully recognize SOEs' (State-owned enterprises) responsibilities towards stakeholders .... It should make clear any expectations the State has in respect of responsible business conduct by SOEs. ... SOEs should observe high standards of responsible business conduct" (chap. V).

41. From an operational perspective, the corporate governance framework offers a useful anchor for implementing human rights requirements and is often already available at the national level. Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.[26] Several States are using the mechanisms set up for corporate governance to spell out and implement their expectations that State-owned enterprises respect human rights (see section III below).

42. The OECD Guidelines on Corporate Governance of State-Owned Enterprises also help to clarify the role and responsibilities of the State as owner. Active ownership is at the core of these guidelines. The guidelines constitute the "internationally agreed standard for how governments should exercise the State ownership function to avoid the pitfalls of both passive ownership and excessive State intervention" (p. 3). States are expected to act as "an informed and active owner, ensuring that the governance of SOEs is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness" (chap. II).

43. Such aims are fully compatible with and necessary for the respect of human rights.[27] There is thus no tension between respecting the autonomy of the enterprise's management, on the one hand, and ensuring that State-owned enterprises respect human rights and responsible business conduct standards, on the other. In the same vein, the Working Group notes that setting up regulations to ensure that State-owned enterprises observe responsible business conduct and respect human rights is no obstacle to their achievement of economic targets. Better business conduct, including respect for human rights, leads to sustainable value creation,[28] while the contrary leads to reputational and material risks and costs.[29]

44. Therefore, the Working Group encourages States to build on the corporate governance framework to ensure their enterprises respect human rights. This does not mean that a State cannot choose other mechanisms and tools to do so. However, given the conceptual and practical proximity between the Guiding Principles on Business and Human Rights and the Guidelines for Multinational Enterprises, on the one hand, and the Guidelines on Corporate Governance of State-Owned Enterprises and the Principles of

[26] See OECD, *G20 OECD Principles of Corporate Governance*, p. 9.

[27] See report of Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights, A/HRC/28/73.

[28] OECD *Policy Framework for Investment 2015 Edition* (Paris,2015), chap. 7; and John Evans and Dinusha Peiris, "The relationship between environmental social governance factors and stock returns", Australian School of Business Research Paper No. 2010ACTL02.

[29] See for example, Rachel Davis, Daniel Franks, "The costs of conflict with local communities in the extractive industry", paper presented at the *First Seminar on Social Responsibility in Mining*, (Santiago, 19-20 October 2011); and Goldman Sachs Global Investment Research, "Top 190 projects to change the world" (April 2008), cited in A/HRC/14/27.

Corporate Governance, on the other, States may find it easier to implement them in a mutually reinforcing manner. The following section offers suggestions in this regard.

III. Leading by example: operationalizing the requirement to take additional steps

45. Guiding principle 4 recommends that States take additional steps to ensure that State-owned enterprises respect human rights, but it does not spell out what those steps should be. In this section, the Working Group suggests a range of measures that States, as owners of companies, could take to operationalize their obligations under principle 4. These suggestions do not exhaustively reflect national practices...Rather, they are based on selected practices, in particular those of States that responded to the Working Group's questionnaire, and on relevant international guidelines on State-owned enterprises, corporate governance and human rights.[30]

A. Setting expectations

46. Guiding principle 2 provides that States should set out clearly the expectation that all business enterprises (including State-owned ones) domiciled in their territory and/or jurisdiction respect human rights throughout their operations. A similar recommendation can be found in the OECD Guidelines on Corporate Governance of State-Owned Enterprises, which provide that the State has a responsibility to communicate to State-owned enterprises its expectations with regard to their financial and non-financial performance. With respect to responsible business conduct, it is expected that "SOEs should observe high standards of responsible business conduct" (p. 25).

47. Several States have issued corporate social responsibility guidelines to their enterprises, with no mention of human rights. This is the case of India (Guidelines on Corporate Social Responsibility and Sustainability for Central Public Sector Enterprises[31]) and China (Guidelines to the State-owned Enterprises Directly under the Central Government on Fulfilling Corporate Social Responsibilities[32]). Only a minority of States today have set specific human rights expectations of State-owned enterprises. This is not surprising as many States have yet to adopt policies explicitly requiring businesses in general to respect human rights.

48. States that have set expectations regarding respect for human rights by State-owned enterprises generally refer to the Guiding Principles on Business and Human Rights.[33]

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[30] Additional criteria for information were: existence of a National Action Plan (NAP) on business and human rights; countries which the Working Group officially visited; and relevant country practices showcased at Annual Forums on business and human rights. Unless specified otherwise, all national policies and practices cited in this section are derived from States' answers to the Working Group questionnaire, available at www.ohchr.org/EN/Issues/Business/Pages/ImplementationGP.aspx. All National Action Plans cited are also available at www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

[31] Available at www.dpemou.nic.in/MOUFiles/Revised_CSR_Guidelines.pdf.

[32] These were developed by the State-owned Assets Supervision and Administration Commission of the State Council (SASAC). See www.en.sasac.gov.cn/n1408035/c1477196/content.html.

[33] See, for example, the Danish National Action Plan – implementation of the UN Guiding Principles on Business and Human Rights (2014); and the Chilean Principles of Corporate Governance of Public

49. Some States specify particular areas of implementation, for instance requiring State-owned enterprises to take action to prevent abuse of human rights abroad and through their business relationships. This is in line with the commentary to guiding principle 2, which states that "there are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State is involved in or supports those businesses." Norway's White Paper on "Diverse and value-creating ownership" requires Norwegian companies to be familiar with the Guiding Principles and to "respect universal human rights as they are defined in international conventions, in all their undertakings, and in their dealings with suppliers and business partners." The Finnish National Action Plan on Business and Human Rights states that, "in State ownership steering, companies are required to observe human rights responsibly and transparently both in their own organizations and in subcontractor chains, in full accordance with the Guiding Principles." Ghana requires "business enterprises controlled by the State ... to comply with provisions for human rights due diligence relating to their activities in other jurisdictions where they operate."

50. State expectations can be focused on specific areas of human rights to which the State wishes to give greater impetus. For instance, Portugal requires State-owned enterprises to adopt gender equality plans.[34]

51. More importantly, several States require their enterprises to act as role models for sustainability and human rights. Sweden's Ownership Policy states that "State-owned enterprises shall act as role models with regard to sustainable business," which encompasses the requirement to comply with relevant guidelines, including the Guiding Principles and the OECD Guidelines for Multinational Enterprises. In Norway, State-owned enterprises are expected to work systematically on their corporate social responsibility and be exemplary in their respective fields. The definition of corporate social responsibility includes human rights and makes explicit reference to the Guiding Principles. Switzerland recognizes that it is the special responsibility of the State to safeguard human rights through State-owned enterprises and notes in particular that "federal enterprises are required to play an exemplary role". Although France does not distinguish between the human rights obligations of private and State-owned enterprises, it expects State-owned enterprises to "set an example".

52. **All the above examples are consistent with the strong policy rationale of guiding principle 4 that States should lead by example. Therefore, a logical additional step that States could take would be to require State-owned enterprises to lead by example in relation to human rights.**

53. A key reason for setting high expectations is linked to the ultimate rationale for State ownership, namely that "the State exercises the ownership of SOEs in the interest of the general public".[35] For the Swedish Government, State-owned enterprises are owned collectively by the Swedish people and are therefore important assets for the entire country. Governing State-owned companies is a task that imposes considerable responsibility, which must be performed in an active and professional manner with value creation as an overarching objective.

54. A further driver for States is managing reputational risk, especially when State-owned enterprises are globalized companies involved in complex value chains and

Companies (p. 25), which apply to the 22 State-owned companies under the Chilean Public Companies System.

[34] Portugal, Council of Ministers resolution 49/2007.

[35] See OECD, *Guidelines on Corporate Governance of State-Owned Enterprises*, p. 19.

operating in high-risk contexts. For China, fulfilling corporate social responsibility is important so as "to spread an image as a responsible nation".[36]

B. Mechanisms to set and manage expectations: ownership arrangements

55. The OECD Guidelines on Corporate Governance of State-Owned Enterprises emphasize that expectations established by the Government with regard to responsible business conduct should be publicly disclosed and mechanisms for their implementation be clearly established (p. 25). Practices in this regard vary. States can set human rights expectations for State-owned enterprises in different documents, such as national action plans on business and human rights or on responsible business conduct, or a State ownership policy. When it comes to ensuring that expectations set are implemented, models for exercising ownership offer a particularly useful avenue as they include functions and tools for implementing the State's requirements of State-owned enterprises.

56. According to international guidelines and good practices, shareholders should not interfere with the management and daily operations of enterprises in which they have holdings. The same applies to States in the exercise of ownership of State-owned enterprises. The OECD Guidelines on Corporate Governance of State-Owned Enterprises provide that "the Government should allow SOEs full operational autonomy to achieve their defined objectives and refrain from intervening in SOE management" (p. 34). Norway's Ownership Policy states that "companies in which the State has a holding are ... subject to regulatory and supervisory authorities in the same way as companies in which the State has no holdings". The same practice can be found in the Swedish Ownership Policy. These safeguards are in place to prevent the instrumentalization of State-owned enterprises for political or private gain and ensure a level playing field with private companies.

57. There are various models for managing ownership.[37] Ownership arrangements have evolved towards greater centralization, which is seen as a guarantee for effectiveness and ensuring clear distinctions between the roles of the State. Centralized arrangements delegate ownership functions to one designated entity — the ownership entity —, as is the case in Finland, France, Mozambique or South Africa. Some countries, such as Chile, Norway and Sweden, share ownership functions between one main ownership entity and other ministries, which are often in charge of specific sectors, while other countries, such as Bhutan and Malaysia, centralize ownership through a company-type structure.

58. **Regardless of the model chosen, all government entities and departments in charge of exercising ownership rights for either all or some State-owned enterprises should take the steps necessary to ensure that they respect human rights.**

59. While this is not yet the case in most countries, there are, nonetheless, practices to learn from. As examples in this section show, several States, such as Chile, Finland, Norway and Sweden, unequivocally use their ownership model to ensure that State-owned enterprises respect human rights, by explicitly stating their expectations in ownership policies or principles and the tasks that the ownership entity will commit to in order to ensure respect for human rights.

[36] See SASAC Guidelines, guideline I(4) (see para. 47 above).

[37] All examples are from The World Bank Toolkit and answers to the questionnaire.

C. Relationship between the State and company boards

60. In the light of the importance of preventing interference by the State in the management of enterprises, boards of directors constitute key vehicles for States, in their role as owners, to manage their relationship with State-owned enterprises. Relations with the board are also used to express State expectations that human rights be included in the enterprise's strategy and objectives.

61. In the Working Group's view, **it is important to establish explicit mandates for boards to ensure and monitor the implementation by State-owned enterprises of human rights standards and to account for it.** Norway's National Action Plan on Business and Human Rights states that "greater involvement by company boards [in human rights] will improve risk management and thereby help to maintain shareholder value." States could formally establish a code of conduct or principles on corporate governance for State-owned enterprises, as has been done in Chile, Norway and Switzerland. States can also apply a common code of conduct for both private and state-owned enterprises.[38] All of these codes or principles follow a "comply-or-explain" approach, which means that boards are expected to account for any deviation from the State's expectations, which in some cases may be justifiable.

62. Supervisory and support mechanisms to boards can be set up, which, in addition to monitoring compliance with State expectations, introduce expert knowledge on issues relevant to responsible business conduct or human rights. In Sweden, an investment team is envisaged for each State-owned company, which includes specialists in sustainable business. Each team analyses the operations, markets and sustainable business practices of the State-owned enterprises. Various aspects of ownership are addressed, including strategic objectives, board changes and target fulfilment.

63. Board nomination and evaluation is a useful mechanism for introducing State expectations into the board agenda and ensuring that expectations are embedded in the strategy of the enterprise. Board members can be evaluated in relation to the enterprise's overall performance with respect to responsible business conduct and human rights. This is done in Chile, Norway and Sweden.

64. Finally, States should ensure gender equality in the recruitment and membership of the boards of State-owned enterprises — a measure called for in the OECD Guidelines on Corporate Governance of State-Owned Enterprises and by United Nations human rights treaty bodies.[39] In its resolution on State ownership policy, the Finnish Government provides that "the State, in its capacity as owner, complies with the Gender Equality Act when making appointments to boards of directors". With regard to enterprises that are fully majority owned by the State, it requires that steps be taken to ensure that both women and men have equal opportunities for advancement and appointment to managerial posts, including senior management, management teams and other executive positions.[40]

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[38] This is the case in Sweden (see the Swedish Code of Corporate Governance) and in South Africa (see King Report on Governance for South Africa, and King Code of Governance Principles (King III), 2009.

[39] See *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, chap. III.E.2; CEDAW/C/POL/CO/7-8; CEDAW/C/FIN/CO/6.

[40] Finnish Government resolution on State Ownership Policy (2011), p. 9.

D. Oversight and follow-up mechanisms

65. Guiding principle 4 provides that States must ensure that relevant regulations regarding respect for human rights are implemented by State-owned enterprises and that they exercise their authority for scrutiny and oversight accordingly. The Council of Europe Committee of Ministers recommends that States should evaluate measures taken and respond to any deficiencies as necessary, including by providing adequate consequences.[41]

66. States can exercise effective oversight in various ways. A first step is to define clear and achievable targets to measure an enterprise's performance. Some States set sustainability targets for their enterprises, alongside financial and public policy targets (when applicable), while others expect the enterprises to set such targets themselves. In Switzerland, the Federal Council issues strategic goals every four years for all State-owned enterprises, which stipulate the expectation of "a corporate strategy committed to sustainable and ethical principles." In Chile, a set of targets and indicators involving financial, management and sustainability elements are defined. For Sweden, the financial targets and public policy targets (set by the State) and the monitoring of the strategic sustainability targets (set by the State-owned enterprise) are said to be important tools efor the State to communicate its expectations as owner. All sustainability targets, including human rights targets, that are formulated by the company are monitored in the same manner and through the same mechanisms.[42]

67. **Hence a useful additional step would be for States to set up — or, at a minimum, require that State-owned enterprises adopt — explicit human rights targets, and monitor their achievement in the same manner and with the same mechanisms used for sustainability targets.**

68. It is important that targets be balanced with regard to the different purposes of State-owned enterprises and their overall aim to maximize value to society, including respect for human rights. Ownership policies in Sweden and Norway contain guidelines on how to manage the balance between commercial targets, public policy assignment targets, when applicable, and long-term sustainability targets. In Sweden, the investment teams for company holdings, which are comprised of specialists in the area of sustainable business, monitor the sustainability targets of the companies and work on sustainable business. The evaluation is then integrated into the development of new financial targets and the overall evaluation of the companies.

69. States can also set up regular dialogues, or ownership meetings, with the boards of State-owned enterprises to track and assess compliance with targets, including human rights-related targets. This can be done at the annual general meeting if the State-owned enterprise operates as a company. Some States, such as Norway, hold additional meetings dedicated to discussing corporate social responsibility.

70. States could also use assessment tools with more detailed human rights-related criteria. For instance, in Sweden, a business analysis tool that includes human rights criteria has been developed for State-owned enterprises. It serves to increase the owner's awareness of companies' risks and opportunities and how they can be managed. The result of the analysis is taken into account in the ownership dialogue, in monitoring the company's development and in the recruitment and nomination of board members. Chile has a similar

[41] See recommendation CM/Rec(2016)3, para. 22.

[42] Communication with Swedish Ministry of Economy and Innovation in follow-up to Sweden's answer to questionnaire.

tool that evaluates performance in relation to key indicators related to corporate social responsibility, including impact and risk assessments of sustainability issues.

71. The State could also use independent review and audit mechanisms to review corporate social responsibility or human rights performance. In Sweden and Chile, the State appoints auditors to review the fulfilment of corporate social responsibility goals by the board and the chief executive officer of the company.

E. Capacity-building

72. Capacity-building can play an important role in helping State-owned enterprises fulfil State requirements on human rights. States should promote awareness-raising and training for members of the boards and management of companies on relevant international standards. States should also promote the sharing of experience among companies on best practices and challenges with regard to human rights. For instance, in its National Action Plan on Business and Human Rights, the Swedish Government commits to increasing knowledge about the Guiding Principles, due diligence and redress mechanisms in State-owned enterprises through a series of workshops.

73. States should encourage the participation of State-owned enterprises in relevant multi-stakeholder and multilateral initiatives related to responsible business conduct and human rights. In Brazil for instance, 25 State-owned enterprises are taking part in a business and human rights initiative launched by the National Secretariat for the Promotion and Defence of Human Rights. At the global level, just under 250 State-owned enterprises are members of the United Nations Global Compact.[41] Given the number of State-owned enterprises that are active in the extractive and energy sectors, they should be encouraged to join the Voluntary Principles on Security and Human Rights.[42]

F. Requirements of human rights due diligence

74. According to guiding principle 4, States should, "where appropriate", require that State-owned enterprises conduct human rights due diligence. State-owned enterprises are also subject to the corporate responsibility to respect (pillar II of the Guiding Principles), which includes conducting due diligence.

75. The requirement for State-owned enterprises to implement a full due diligence cycle is not yet common practice. However, several States require State-owned enterprises to conduct human rights due diligence in line with the Guiding Principles in a general manner.[43] The sector-specific Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains require enterprises to "observe the Guiding Principles on Business and Human Rights during the entire life-cycle of the mining project", including operations abroad.[44]

[41] Available at www.unglobalcompact.org.

[42] Only two State-owned enterprises are currently participating. Available at www.voluntaryprinciples.org.

[43] See for example, the Chilean Principles on Corporate Governance, the Danish National Action Plan and the Norwegian Ownership Policy.

[44] See China Chamber of Commerce of Metals, Minerals and Chemical Importers and Exporters, "Due Diligence Guidelines for Responsible Mineral Supply Chains", p. 8. While the Chamber is a business association, it includes a large number of State-owned enterprises. The Guidelines were developed

76. The Swedish National Action Plan on Business and Human Rights provides that the State will ensure that State-owned companies, where appropriate, conduct human rights due diligence in order to assess and address any significant risk to human rights.

77. **In cases where due diligence is not mandatory for all State-owned enterprises and under all circumstances, the Working Group suggests that States define the criteria under which they will require State-owned enterprises to conduct human rights due diligence, such as the size of the enterprise, the type of enterprise and its operations, the political and human rights context and the industry sector in which it operates.**

G. Requirements of disclosure, transparency and reporting

78. Guiding principle 21 emphasizes the importance for businesses to communicate externally to account for how they address their human rights impacts. Similarly, the OECD Guidelines on Corporate Governance of State-Owned Enterprises recommend that "SOEs should report material financial and non-financial information on the enterprise in line with corporate disclosure standards, and including areas of significant concern for the state as an owner and the general public" (see sect. VI).

79. The corporate reporting trend is for increased requirements for report on non-financial information and performance, including human rights. The trend seems clearer with respect to large and State-owned companies.[47] States can, and already do, require State-owned enterprises to report annually to their owners, including on how they have achieved the objectives related to sustainability and human rights. Data from the Global Reporting Initiative shows that, in 2013, 13 out of 45 countries[48] had policies or initiatives for reporting on non-financial information, including on issues related to human rights, that specifically targeted State-owned enterprises.[49] In China, half of the over 1,600 sustainability reports published in 2012 were issued by large State-owned enterprises and listed companies.[50]

80. **Given those trends and the fact that transparency and accountability are prominent principles within most international guidelines,[51] the Working Group recommends that States take the additional step to systematically require the enterprises that they own or control to report on environmental, social and human rights performance.**

81. States could also suggest or require that companies follow an established methodology to communicate on human rights issues, such as the Global Reporting Initiative G4 Sustainability Reporting Guidelines, which include references to the Guiding

with OECD guidance. Available at www.mneguidelines.oecd.org/chinese-due-diligence-guidelines-for-responsible-mineral-supply-chains.htm.

[47] Global Reporting Initiative, *Carrots and Sticks: Sustainability reporting policies worldwide - today's best practice, tomorrow's trends* (2013); see also EU Directive 2014/95/EU regarding disclosure of non-financial and diversity information by certain large "public-interest entities" with over 500 employees.

[48] These were: Brazil, China, Ecuador, Finland, France, Iceland, India, Indonesia, Netherlands, Russian Federation, South Africa, Spain and Sweden.

[49] Global Reporting Initiative, *Carrots and Sticks*, p. 17.

[50] Ibid., p. 27.

[51] KPMG, *Currents of change: The KPMG Survey of Corporate Responsibility Reporting 2015*.

Principles and the Guiding Principles Reporting Framework.[52] State-owned enterprises in Chile, Norway and Sweden, for instance, are asked to report according to the Global Reporting Initiative guidelines.

82. Finally, aggregate reporting by the State on the activities and performance of the enterprises it owns is an additional means of improving companies' transparency. It is also a way to increase the State's transparency and accountability with regard to the requirements it sets for State-owned enterprises. In Norway and Sweden, the respective ownership entities publish an annual report on the State's ownership, which reviews the corporate social responsibility performance of all enterprises.

H. Ensure effective remedy

83. As part of their duty to protect, States must take all appropriate steps to ensure that victims of human rights abuses have access to effective remedy (pillar III of the Guiding Principles). This applies to abuses by State-owned enterprises and private companies equally. Given the separation of powers between the judiciary and the executive branch — more specifically, in this case, the department or entity exercising ownership rights — the State duty to ensure access to effective remedy for abuses by State-owned enterprises is not distinct to its duty to ensure remedy for abuses involving private companies. The ownership entity must respect the independence of judicial and non-judicial grievance mechanisms and not interfere in their proceedings. This limits the State's scope for action as an owner and might explain the lack of State policies and practices in this regard.

84. **As the owner of State-owned enterprises, the State should make sure that: (a) the enterprises it owns or controls do not obstruct justice; (b) they cooperate fully with judicial and non-judicial grievance mechanisms; and (c) they fully comply with their responsibility to respect human rights, including providing remediation for human rights abuses that they may be causing or contributing to.** These considerations are relevant for all three main categories of remedy mechanisms covered by pillar III of the Guiding Principles.

85. The first category is State-based judicial mechanisms. States must ensure access to judicial remedies for victims of all abuses, whether committed by a State-owned enterprise or a private company. In addition, as the owner of State-owned enterprises, the State needs to set clear expectations that: (a) when there are legal proceedings against a State-owned enterprise, the enterprise should not interfere in the judicial proceedings or use its special relationship with the State to interfere in or block proceedings; (b) States and State-owned enterprises should carefully consider the circumstances under which the enterprise might claim immunity based on its association with a State. Claims of State immunity in human rights cases often constitute a risk of being a barrier in access to remedy. The expectations of the State as owner of State-owned enterprises should be that the scope for claiming immunity should be limited to the bare minimum and that State-owned enterprises fully cooperate in judicial proceedings.[53]

[52] See the United Nations Guiding Principles Reporting Framework (2015), available at www.shiftproject.org/project-human-rights-reporting-and-assurance-frameworks-initiative-rafi. The reporting framework enables companies to report in-depth on their responsibility to respect human rights.

[53] See United Nations Convention on Jurisdictional Immunities of States and Their Property; see also the Explanatory Memorandum to Council of Europe Committee of Ministers recommendation CM/Rec(2016)3, para. 61.

86. The second category is State-based non-judicial mechanisms. Nothing prevents a State from setting up a dedicated accountability mechanism to address abuses by State-owned enterprises. For now, States seem to rely on existing mechanisms that address abuses by any company, whether private or State-owned. One such mechanism is the National Contact Points for the OECD Guidelines for Multinational Enterprises, which is established by each adhering Government. States should require State-owned enterprises to fully cooperate with National Contact Points and other non-judicial mechanisms, to participate in the processes in good faith and to accept the findings of the mechanisms. For instance, several State-owned enterprises in Brazil have signed terms of commitment to better uphold responsible business conduct and follow the OECD Guidelines for Multinational Enterprises, which include collaboration and dialogue with the National Contact Points regarding any allegation of non-observance of the guidelines.[54] States should also make it clear that State-owned enterprises should not claim a privileged position with regard to legitimate State-based mechanisms. In a landmark case, Norway's National Contact Point regretted the lack of cooperation by Norges Bank Investment Management, which manages Norway's Pension Fund, and stated that it was "particularly regrettable in light of the Norwegian people's expectation that applies to State-owned enterprises."[55]

87. The third category of remedy mechanisms is non-State-based grievance mechanisms, including operational-level grievance mechanisms. As with other aspects of their operations, and in order to fully abide by their responsibility to respect human rights, State-owned enterprises should be encouraged to be role models in their approach to remediation. States should require State-owned enterprises to establish or participate fully in operational-level grievance mechanisms (see guiding principle 29). The mechanisms must comply with the effectiveness criteria contained in guiding principle 31.

IV. Conclusions and recommendations

A. Conclusions

88. **All business enterprises, whether they are State-owned or fully private, have the responsibility to respect human rights. This responsibility is distinct but complementary to the State duty to protect against human rights abuses by business enterprises. This duty requires States to take additional steps to protect against abuses by the enterprises they own or control. This goes to the core of how the State should behave as an owner and the ways in which its ownership model is consistent with its international human rights obligations.**

89. **State-owned enterprises are an enduring and significant feature of the global economy. They can have major human rights impacts that are not always positive. Against this backdrop, there are compelling normative and policy arguments for States to take additional steps to ensure that State-owned enterprises respect human rights. Under some circumstances, an abuse of human rights by such enterprises may entail a violation of the State's own international law obligations and it is a matter of policy coherence for States to ensure that enterprises that are closely related to them**

[54] OECD, *Annual Report on the OECD Guidelines for Multinational Enterprises 2014*, p. 25, available at www.mneguidelines.oecd.org/2014-annual-report-oecd-guidelines-for-mnes.htm.

[55] Norway National Contact Point for the OECD MNE Guidelines, "Final statement: complaint from Lok Shakti Abhiyan, Korean Transnational Corporations Watch, Fair Green and Global Alliance and Forum for environment and development vs. POSCO (South Korea), ABP/APG (Netherlands) and NBIM (Norway)", 27 May 2013, p. 8.

and over which they have greater control respect human rights. There are also compelling financial and reputational reasons for States, as active owners of companies, to do so.

90. While the call to take additional steps applies to all States equally, its precise implications will be context- and company-specific. In some countries or situations, or with respect to specific enterprises, the relationship between a State-owned enterprise and the State will be a very close one and the means at the disposal of the State to ensure respect for human rights and the level of its control and leverage over the enterprise will be greater than for others. In all those circumstances, States should take the utmost care to ensure that those enterprises respect human rights.

91. This does not mean that States should pay less attention to ensuring respect for human rights by fully private enterprises. The ultimate goal is the full respect for human rights by all enterprises, irrespective of size, sector, operational context, structure or ownership. As States work towards that goal, there are still persuasive reasons for them to lead by example. This will only strengthen their legitimacy in setting regulations and expectations towards private businesses.

92. The Working Group notes the significant efforts made by a number of States in all regions of the world to flesh out their duties to ensure that the enterprises they own or control respect human rights or standards of responsible business conduct. It notes also the effective models that a few States have developed. Yet, most States do not seem to fully understand what taking additional steps to protect against human rights abuse by State-owned enterprises means in practice. Nor does it seem obvious to many State-owned enterprises that they have a responsibility to respect human rights.

93. While this is no excuse for inaction, the Working Group acknowledges that, compared to that given to other business and human rights issues, less attention has been paid by all stakeholders to the human rights impacts of State-owned enterprises. This report has shown why this situation must change.

94. States, as primary duty bearers under international human rights law, should lead by example. To show leadership on business and human rights requires action and dedicated commitment on many fronts. It also includes using all the means at the disposal of States to ensure that the enterprises under their ownership or control fully respect human rights throughout their operations. There is untapped potential for State-owned enterprises to be champions of responsible business conduct, including respect of human rights. The Working Group calls on States and State-owned enterprises to demonstrate leadership in this field.

B. Recommendations

95. In the present report, the Working Group suggested a preliminary framework for analysis and action and elaborated on the measures States should take as owners of companies. These issues are complex and will have context-specific implications. The Working Group welcomes feedback from States and other stakeholders on the report and on the following recommendations:

Recommendations to States

96. States should comprehensively review whether and to what extent they are meeting their international human rights obligations through the business activities of the enterprises that they own or control, at home and abroad.

97. Based on that review, States should identify key entry points and measures to be taken to more effectively discharge their obligations under principle 4 of the Guiding Principles on Business and Human Rights, taking into account the measures suggested in Section III of this report. States should specify the precise tasks they commit to do in this respect in a public document, such as a National Action Plan.

98. At a minimum, States should clearly set their expectations that State-owned enterprises respect human rights throughout their operations, adopt human rights commitments and be role models in this regard. States could set out their expectations in a specific document such as a national action plan or, preferably, amend existing regulations on ownership, corporate governance or responsible business conduct so as to expand their coverage.

99. States should be coherent in their implementation of international standards and not implement them selectively. More specifically, the OECD Guidelines on Corporate Governance of State-owned Enterprises should be implemented in a mutually reinforcing manner with the Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

100. States should, as a matter of policy coherence and accountability, ensure that the scope of any future legally binding instrument on or relevant to business and human rights covers enterprises that are owned or controlled by the State.

Recommendations to State-owned enterprises

101. State-owned enterprises should strive to be role models and fully meet their responsibility to respect human rights.

102. To do so, they should adopt appropriate policies and processes to address abuse, including a policy commitment, human rights due diligence and remediation mechanisms when harm occurs, which are integrated throughout their operations.

Recommendations to national human rights institutions

103. National human rights institutions should assess whether relevant policies relating to State-owned enterprises are aligned with the State's human rights obligations and provide guidance to the State in this regard.

104. They should provide guidance to State-owned enterprises on their human rights responsibilities.

Recommendations to international organizations and the United Nations system

105. International organizations and the United Nations system should assist States and promote coherence in their implementation of international guidelines on corporate governance, responsible business conduct and human rights.

106. They should promote such coherence when supporting States in developing national plans to meet the Sustainable Development Goals, especially given the potentially significant role that State-owned enterprises will play in this regard.

107. They should support initiatives to contribute to building the knowledge base and competency of boards of directors and management of State-owned enterprises with regard to respect for human rights.

Recommendations to the United Nations human rights system

108. United Nations human rights treaty bodies and special procedures, in examining individual communications under their complaint procedures, assessing

specific countries and drafting general comments and recommendations, should examine the human rights impacts of enterprises that are owned or controlled by a State and clarify the State's duty with respect to these enterprises, taking into account principle 4 of the Guiding Principles on Business and Human Rights.

Recommendations to civil society organizations and academia

109. Civil society and academia should dedicate increased attention to the implications of State duties with respect to State-owned enterprises and the responsibility of State-owned enterprises to respect human rights, including in terms of access to remedy and accountability under national and international law;

110. They should gather data specific to State-owned enterprises and their human rights commitments and performance, in order to identify gaps and good practices globally.

Recommendations to business associations

111. Business and employer associations, particularly in countries or sectors with many State-owned enterprises, should build their own capacity around business and human rights and offer specific guidance to their members that are State-owned enterprises on their responsibility to respect human rights.

112. Business associations should use their convening power to share learning and good practices among State-owned enterprises.